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Current Topics.

Law, History and Microphotography.

THE MASTER OF THE ROLLS, giving his presidential address on 16th November to the British Records Association at their annual meeting at Vintners' Hall, referred to a scheme for the microphotography of probate registers, which, thanks to a generous grant by the Pilgrim Trust, had become a practical possibility. His lordship said that since the beginning of the present year the whole of the registers of wills in the Prerogative Courts of Canterbury and York down to the year 1700, and a substantial part of the like registers from district courts to the year 1600, had been reproduced in this way, and over 200 rolls of film—altogether more than 20,000 feet in length and containing about 250,000 photographs—had been deposited in a place of safety. His lordship added that that was not only a considerable contribution to the safeguarding of the country's records, but also a provision of material for research which ought to be of very great benefit to the students of this and other countries when happier times arrived. Apart from its value to students, this piece of work was important because of the opportunity it gave to investigate the technique of microphotography in its special relation to records. His lordship said that he had nominated, at the request of the association, a new committee to consider the post-war problems of English archives. Starting with the practical question of the dangers of destruction and dispersal which, in that period, might be expected to threaten many records with a new gravity, the committee had gone on to survey—taking a wide and long view—the possibilities of what should be not only a post-war but a reconstruction period: and had formulated proposals affecting the welfare of every category of archives outside the Public Record Office. So long as the war continues, and even for some time after peace comes, the dangers of loss of valuable records, whether owing to enemy action or well-intentioned salvage, is very real. The work done by LORD GREENE and all those others who have saved and discovered documents of legal or historical value during the present war gives some comfort to those who have lived to see the lamps of civilisation burn low.

The British Broadcasting Corporation.

OUR sincere congratulations are extended to the B.B.C. on the celebration of their twenty-first anniversary. The corporation has always shown a proper respect for lawyers. On this anniversary we remember listening with pleasure to the attractive voice of BIRKETT, J., and the charming accents of the late MAURICE HEALY, K.C., in their Sunday evening talks not so long ago. Going further back, we recall those interesting talks by anonymous lawyers who attempted to explain in simple language difficult points of the law affecting every-day life, in the pre-war series "Is that the law." Further back still, the B.B.C. was serving the cause of popular legal education in their "Trials without evidence," in which anonymous lawyers beguiled the public in speeches on both sides in imaginary law suits and criminal trials illustrating different aspects of the law. More recently, the Brains Trust has contributed its quota to the corporation's efforts to spread popular knowledge of the law. It is no criticism of their impromptu efforts to say that they have occasionally been wrong. It is a marvel that, on a subject which, as Sir WILLIAM BEVERIDGE remarked at a Brains Trust session, it is impossible to reduce into the compass of a single book, they should so often have been right. One remembers occasions when they have hazarded what the question master has called a series of brilliant conjectures, such as that in which it was suggested that each judge at the Central Criminal Court sat as a specialist in his own field. The most notable broadcast both from the legal and the human point of view was that given on 15th June, 1942, the seven hundred and twenty-sixth anniversary of the signing of Magna Carta. Even in 1215, according to the commentator, there was a great lawyer HENRY OF BRATTON to explain the charter in popular language to the citizens of London. It will be recalled that at the conclusion of the programme LORD GREENE said that in framing the laws of England we had turned to the spirit of Magna Carta. The State and Ministers of State were ruled by the law of the State, from which they could not depart, whereas dictatorship was responsible to no law. So long as there are these free laws and institutions and great lawyers to expound them to the public through free mediums like the Press and the British Broadcasting Corporation, we need have no fear of alien tyrannies getting the least foothold on these shores.

Pay for Housewives.

THE latest bone of contention between the sexes is the question of payment for housewives. The state of the law as revealed by the recent decision of the Court of Appeal in *Blackwell* v. *Blackwell* (*ante*, p. 394) has been the subject of comment, learned and otherwise, in Parliament and the Press, and it has now been discussed by the Brains Trust. In their session on 16th November, Dr. EDITH SUMMERSKILL, M.P., asserted that housewives suffered from a great injustice. Their economic position was ordered by the Married Women's Property Act, 1882, which, so Dr. SUMMERSKILL said, made it illegal for a wife to invest or put into the Post Office her savings from housekeeping money. She was committing a fraudulent act if she did so. None would uphold "this nineteenth century piece of legislation." She worked long hours and ought to have the surplus that she saved even if it was only 2s. or 3s. a week. Dr. MALCOLM SARGENT thought that husband and wife should discuss what should be done with the surplus, and that by law it should belong to both. The Hon. QUINTIN HOGG, M.P., said that whether the law was altered or not, it was open to the husband and the wife to make their own agreement. He added that the problem did not arise until husband and wife quarrelled. The matter did not depend on the Married Women's Property Act. In any case if the recent Appeal Court decision had been based on actual practice in working-class homes, it might have been decided quite differently. He felt that Parliament should be cautious about introducing a new Act which would bring husband and wife's income questions into court. It was not a relationship which should be too much subject to the court. Dr. SUMMERSKILL is chairman of the Married Women's Association, and, on the following evening an article appeared under her name in the *Star*, in which she amplified her criticism of the law and indicated the reform which she proposed. Dr. SUMMERSKILL unrepentantly repeated her heresy about the Married Women's Property Act, which as every lawyer knows, permitted a married woman to have her own property at common law, and even to go to law with her husband about it, with the aid of a special summary procedure in chambers under s. 17. Without this "nineteenth century Act," the economic position of married women would indeed be parlous. Dr. SUMMERSKILL fairly stated that the majority of married men treat their wives decently, but that there is a mean minority who do not reveal the amount of their wages to their wives and are responsible for a great deal of misery. A reform would enhance the dignity of the housewife, and "in the eyes of the children the mother will, for the first time, be regarded as father's equal. It need not affect most homes, where a fair and sensible arrangement is made on money matters, but it would in an important minority of cases protect the just reward of the toiling housewife from the mean and heartless husband. There was deep feeling on the matter in the country, and the fall in the birth rate was only one indication of the resentment felt. It is difficult to resist the arguments of this able and powerful advocate. If a wife is entitled to reasonable

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treatment from her husband under the Inheritance (Family Provisions) Act, 1938, after his death, it is difficult to see why she should not be able to appeal to the courts to order reasonable treatment during his life. Some marriages, which might otherwise be happy, are made miserable by arguments about money, and applications to settle these arguments in chambers could easily be settled in a friendly fashion by a wise judge. If it were laid down that a wife's work is as deserving of payment as that of the proverbial labourer, no one would be a whit the poorer, or indeed less happy.

Bigamy and its Prevention.

REFERENCE was recently made in these columns (*ante*, p. 393) to a statement made by the late Recorder of the City of London that bigamy could be abolished by one simple reform. The matter has since been the subject of a comment by WROTTESLEY, J., at Liverpool Assizes, when his lordship said: "This is one more case showing the absolute demand for some reform or change in the law . . . If only steps were taken to see that persons who offer to get married are not already married, as could quite readily be done, a crime of this kind could not be committed." Mr. HARRY MOTTERSHEAD, President of the Macclesfield Law Society, has published in a Sunday newspaper (*The Empire News*, 1st October) a scheme for putting an end to the crime of bigamy. The scheme is that an Act of Parliament should be passed to provide that (1) the Registrar-General should make a record of every marriage on the original entry of birth of both parties in his books; and (2) the Registrar-General should make an official search for prior impediments on application by the local registrar or parson to whom notice of marriage has been given. If as a result of the search a prior marriage is disclosed, the party involved would be required to produce either (*a*) a certificate of the death of the other spouse, or (*b*) a certified copy of the decree absolute of divorce or annulment before the intended marriage is solemnised. Provision could be made against the possible use of false names by requiring a person giving notice of intended marriage to be accompanied by a witness who would declare in writing the identity of the parties of the intended marriage. A requirement to produce identity cards, in Mr. MOTTERSHEAD'S opinion, would lead to forgery. In the case of marriage by special licence, applications for searches for prior impediments could be made by telegram. Mr. MOTTERSHEAD counters the argument that such a proposal as his treats everybody who marries as an intending bigamist by pointing out that the necessity for searches on the sale of a property does not mean that the purchaser treats the vendor as a potential fraud. As against the additional work that would be caused to the department of the Registrar-General, the time of judges, counsel, solicitors, court officers and witnesses would be saved, and search fees at a cost of 1s. 6d. to each party would show a magnificent profit to the State. Mr. MOTTERSHEAD not only deserves congratulation on producing a scheme to which he has clearly given much careful thought, but he, as well as the judges who have drawn attention to the heavy increase in bigamy, and indeed the State itself, deserves that the whole question should receive the attention of a special inquiry.

Fees at Quarter Sessions.

A LOCAL report which is of more than local interest to both branches of the legal profession was presented at the end of September by a committee appointed at the Bucks Midsummer Quarter Sessions to consider the existing scale of fees paid to counsel and solicitors for the prosecution at Bucks Quarter Sessions. The last time this scale was revised was at the Easter Sessions, 1919. Representations had been made that the fee allowed to a solicitor for the prosecution (which is now £3 3s. on the first indictment against a prisoner and £2 2s. for each indictment after the first against the same prisoner) should be increased to £4 4s., so as to correspond with the fee allowed to a solicitor for the defence under the Poor Prisoners Defence Act, 1930, and the fee allowed to a solicitor for the prosecution at the assizes. The committee pointed out that cases are now rare in which more than one indictment is preferred against the same prisoner, so that the provision in the existing scale for the payment of an additional fee on each indictment after the first against the same prisoner seldom applies. The committee were therefore of opinion that the existing scale should be amplified by allowing an additional fee both to counsel and solicitors in cases involving more than one distinct charge although covered by the same indictment. The additional fee would, of course, not be paid where the additional charges were merely alternative charges based on the same facts, but only where the additional charges were, or might have been, the subject of separate sets of depositions, being in effect related to distinct offences. On the other hand, the committee were not prepared to increase the existing scale of fees merely on the ground of the so-called "increased cost of living" or even the increased cost of stationery, postage, etc., although the court might in future be readier to exercise its discretion to allow a higher fee to counsel or solicitors in cases really involving considerable work on the part of either. The committee proposed that the present scale of fees to counsel and solicitors in criminal cases at quarter sessions be amended as follows: Counsel, on the first indictment, £3 5s. 6d.; and where two or more distinct charges involving separate offences are joined in the same indictment, there shall be allowed for each additional charge after the first, not exceeding three, a fee of £1 3s. 6d. For a solicitor, on the first indictment, including preparation of brief, etc., £3 3s.; and where two or more distinct charges involving separate offences are joined in the same indictment, there shall be allowed for each additional charge after the first, not exceeding three, a fee of £1 1s. The recommendations were unanimously approved by the court.

First-aid Repairs.

IN a circular issued by the Ministry of Health to housing authorities and county councils on 8th November reference is made to the present arrangements whereby labour is secured for the repair of war damage to houses by temporarily withdrawing men from Government priority contracts, introducing contractors with their labour forces from other districts and concentrating local labour at the expense of whatever work it is doing, even though it is of an essential nature. It is stated, however, that there are no clearly defined arrangements for the dispersal of this specially collected labour as soon as the immediate necessities have been met, and it is necessary to determine the point at which overriding priority ceases so that the labour so collected can be returned to the districts and to the other essential work from which it was drawn. Moreover, while the Ministry of Labour and National Service's current instructions provide for the direction of men away from extended repairs, the point at which first-aid repairs finish is not at present defined, and it is desirable to lay down more definite instructions in regard to the dispersal of men employed on this work. Finally, it is important to define the point at which extended war damage repairs are executed under the general scheme for repair to houses laid down under Circular 2871 of the 11th October, 1943 (*ante*, p. 394). Repairs to war-damaged houses should, it is said, be divided into three stages: (1) The first stage covers the provision of tarpaulins and external felting, small patching to render wind- and water-tight, clearing away rubbish, refixing external doors and restoration of the minimum essential services. For a period up to fourteen days this work will have overriding priority and labour may be borrowed from Government priority contracts for it. The Assistant Director of Emergency Works of the Ministry of Works with the Ministry of Health Senior Regional Officer and the local authority will ensure that only this emergency class of work is done during this stage with the labour so provided. The period may be extended in exceptional circumstances up to twenty-one days. At the end of the period specified, the labour borrowed from Government priority contracts will be withdrawn by the Ministry of Labour after consultation with the Assistant Director of Emergency Works and returned to the sources from which it was drawn. (2) First-aid repairs shall be strictly limited to the standard laid down in para. 5 of Circular 2450, but including in addition the repairing of internal doors. This work may be carried out for a period of two months after the completion of the post-blitz stage and organisation and labour demands should be directed to the completion of the work in that time. During this period these repairs will have priority; they are of high urgency and the Ministry of Works may use the special machinery of the Emergency Works Organisation where absolutely necessary to assist in providing the required labour. During this stage labour brought in from other districts other than that returnable at the end of the post-blitz stage may be retained on the work if vitally necessary. At the end of this period, subject to any limited extension in special cases which may be agreed between the Assistant Director of Emergency Works and the Senior Regional Officer of the Ministry of Health (and to be communicated to Ministry of Labour and National Service), the local authority must dispense with the labour imported from other districts and the Ministry of Labour and National Service may direct away local men required for priority work. (3) For work beyond the first-aid stage and for any period after the two months (except as specifically extended), referred to in para. 2, no automatic priority exists. This work will be covered by the new scheme for general repairs to houses described in Circular 2871. Although the general scheme restricts permissible expenditure on any one house to £250 or to £200 per flat or tenement, this does not preclude a local authority in exceptional circumstances from submitting applications to the Senior Regional Officer for consent to carry out permanent repairs to war-damaged houses under the provisions of s. 1 of the Housing (Emergency Powers) Act, 1939, as amended by the Repair of War Damage Act, 1941.

Recent Decision.

In *In re Blue Star Line, Ltd.*, on 15th November (*The Times*, 16th November), BENNETT, J., confirmed the alteration of the objects of a company carrying on an extensive shipping business, in order to enable it to carry on the business of air transport in conjunction with its existing business. His lordship imposed the condition that it should be made clear in the alteration that the company did not intend to carry on air transport as a separate business.

War Damage: Classification of Claims.

On 22nd November, in his sixth statement to the Press since the foundation of the War Damage Commission, the Chairman, Sir Malcolm Trustram Eve, K.C., gave new facts and figures about the progress of the Commission's work, and announced an important change in the procedure preliminary to the classification of claims.

On the Commission's books, Sir Malcolm said, there were in round figures 2¾ million damaged properties. Claim forms received numbered 1,754,000, of which 1,124,000 were due for money at once. Of these, 1,077,000 had been paid in full settlement, representing 1,401,000 separate hereditaments. Since January, 1943, claims were being settled at the rate of some 8,600 per week. The staff numbered 2,265, of whom 1,000 were women.

The work of classification had proceeded so far that within a week or so the Commission would be able to let the great majority of owners, whose property had suffered serious damage, know the preliminary decision with regard to their cases. Sir Malcolm said that he was referring only to developed hereditaments, and excluded special classes not for sale in the open market, such as local authority buildings, fire and police stations, sports grounds and charitable properties.

After referring to the amending Act of 1943, which introduced the March, 1939, basis of calculation of costs and values, and the recent Treasury direction that the provision of housing accommodation is in the public interest, the Chairman said that the result of these two measures was that in the case of many totally destroyed or heavily damaged properties, the Commission would now find itself able to pay for the cost of re-erection and repair when it was done. The doing of the work was still subject to the Ministry of Works licence and planning and other statutory restrictions and consents.

As to the method by which the Commission would inform owners of their preliminary decision and the steps which they should take on receiving that notification, a new form, Val. 1, tells an owner that in the opinion of the Commission, his property is a total loss, for which a value payment is appropriate. Val. 3 tells him that while from the description of damage originally given to the Commission, his property appeared to be a total loss, in the opinion of the Commission that is not so, and that he will be able to claim a cost of works payment after he has made the damage good.

The receipt of Val. 1 was not to be taken as a final determination, but as an opportunity to send the Commission written arguments against the classification. If the Commission was not convinced by these arguments, Sir Malcolm said, a further document would be sent, finally determining that the case is a total loss and provisionally fixing the amount of the value payment. From this decision there were the statutory appeals. Val. 3 would be sent to everyone whose original report of the damage was such that a "total loss" claim form was sent to him but whose property the Commission now classified as a non-total loss.

Where an owner who has had a cost of works form issued to him was in doubt as to the exact classification of his premises now, a letter similar to Val. 3, called Val. 4, would be issued. The issue of Val. 4 would commence on 1st December, and would continue during the month. No requests for classification should therefore be pressed until after the end of December, as they might be in the post.

Persons who had reported their premises to the Commission as a total loss, and, expecting nothing but a value payment, had either disclaimed their lease or sold their property, would now not receive any war damage payment, unless their contract was drawn up very cleverly. In such cases the property would be carefully reviewed under the statutory formula, and if that strict test produced a total loss answer, the Commission would reverse their preliminary decision and determine a total loss and a value payment. It was for the claimant to point out where the injustice was likely to arise.

In the case of sales by owners who had received Val. 3, the purchaser would buy with the knowledge that he would either receive a cost of works payment at the right time, or, at the worst, if planning or other reasons forced it, a value payment. If, after receipt of Val. 3, the payment was converted into a value payment, either in the public interest (s. 20) or by reason of a notice to treat (s. 14) or, if the war damage was not made good (s. 13), that "converted value payment" went in all cases to the owner at the time of the conversion, and not to the owner at the time of the bomb. Such a purchaser ought to buy and a vendor to sell at a price based on the undamaged value. An owner who received Val. 1 would be wise to sell at a price based on the damaged value, unless the consent of the Commission to an assignment was obtained.

The Chairman added that by the end of next month the Commission hoped to be able to send to the great majority of persons who had suffered serious war damage the answer to the question: "Is my property a total loss?" He concluded with the statement that only a very small proportion of claimants and builders in this country presented fraudulent claims. The Commission and the local authorities were vigilant to initiate prosecutions, and a study of the sentences recently imposed and the judicial comments, showed that this type of offence was considered to be serious.

The Law relating to British Internal and International Air Transport.*

The Air Navigation Act, 1936, s. 1 (1), as amended by British Overseas Airways Act, 1939, s. 30, and Sched. IV, reads as follows:—

"The Secretary of State may, with the approval of the Treasury, agree to pay subsidies to any persons and to furnish facilities for their aircraft, in consideration of undertakings entered into by those persons with respect to the carriage of passengers or goods *within the British Islands*, exclusive of Eire:

Provided that—

(*a*) the aggregate amount of the subsidies payable under all the Agreements made in pursuance of this Section shall not exceed £100,000 in any financial year; and

(*b*) no subsidy shall be payable under any such Agreement after the 31st day of December, 1943."

Therefore, no subsidies may be paid after 1943 for any internal carriage in the United Kingdom.

Section 5 (1) of the Air Navigation Act of 1936 reads:—

"His Majesty may by Order in Council make provision—

(*a*) for securing that aircraft shall not be used *in the United Kingdom* by any person—

(i) for plying, while carrying passengers or goods for hire or reward, on such journeys or classes of journeys (whether beginning and ending at the same point or at different points) as may be specified in the Order, or

(ii) for such flying undertaken for the purpose of any trade or business as may be so specified,

except under the authority of, and in accordance with, a licence granted to the said person by the Licensing Authority specified in the Order."

The meaning of this section is obscure. It refers to the use of aircraft "in the United Kingdom," but leaves it doubtful if *exclusive* use in the United Kingdom is meant, or if the Order could be extended to user by aircraft carrying passengers or goods in the United Kingdom in the course of journeys to and from the United Kingdom. The latter seems more probable.

The Order under the Act establishing the Licensing Authority (S.R. & O., No. 613 of 1938) is specifically limited to "journeys upon which passengers or goods are both embarked and landed within the United Kingdom, and for journeys upon which passengers or goods are embarked in the United Kingdom and landed in the Channel Islands or the Isle of Man or embarked in the Channel Islands or the Isle of Man and landed in the United Kingdom."

At present,* therefore, the licensing provisions of the Act are limited to internal operations. But it seems probable that an order could be made extending the licensing provisions to aircraft engaged in international operations to and from the United Kingdom.

By the British Overseas Airways Act, 1939, British Overseas Airways Corporation is given the duty of developing overseas air transport services, and power (with the authority of the Secretary of State for Air) to operate internal air transport services, flights on charter terms, aerial survey flights, to make arrangements for the instruction and training of personnel and to carry out repairs to aircraft, coupled with wide incidental powers, such as the acquisition or construction of aerodromes, buildings, etc. But the corporation may not (except with the approval of the Secretary of State for Air) undertake any overseas services which were not in operation by Imperial Airways or British Airways in 1939 so long as there are current in favour of the corporation any grants or guarantees by the Treasury.

The Act gives the Treasury power to guarantee the redemption or repayment of, and the payment of interest on, any airways stock issued or temporary loan raised by the corporation under the Act; and up to 31st March, 1941, Government development grants might be made to the corporation. After that date further grants may be made, not only to the corporation but also to other companies in which the corporation holds stock or shares and on the boards of which there are one or more directors nominated by the Secretary of State for Air.

Government grants to the corporation (and such other companies as aforesaid) must not exceed £4,000,000 in any financial year, and no such grants may be made after 31st December, 1953. "The Airways Stock Regulations, 1940" (S.R. & O.,

* Through the operation of war-time Regulations (S.R. & O., Nos. 1016 and 1588 of 1939) no aircraft may at present fly within the United Kingdom without a permit from the Secretary of State for Air; and S.R. & O., No. 613 of 1938 (dealing with licences to fly internally) is revoked. Therefore, so far as concerns licensing and flying generally in the United Kingdom, this article must be read as showing the position at the outbreak of war, which presumably will be resumed when hostilities cease.

No. 150 of 1940), make provision for borrowing and the issue and redemption of airways stock by the corporation. The amount of such stock which may be issued must not exceed £10,000,000, provided that stock in excess of this sum may be issued for the purpose of redeeming airways stock which the corporation is required or entitled to redeem or for repaying temporary loans. No such stock has yet been issued, and the corporation has been subsisting upon grants from public funds. No information has been supplied about the amount of such grants, but an indication of their magnitude can be gained from a remark made in the House of Commons by the Under-Secretary of State for Air (Captain Harold Balfour) that £5,000,000 per annum was being expended upon civil aviation.

The result of existing legislation and orders thereunder is that British Overseas Airways Corporation may receive grants not exceeding £4,000,000 per annum in each year up to 31st December, 1953, but no other undertaking operating internally or internationally may, after 31st December, 1943, receive any grant, subsidy or other financial assistance from public funds. This would not, however, apparently preclude another undertaking from receiving a Government contract for carriage of air mails. Nevertheless, as above mentioned, there is a possibility of an order being made under s. 5 (1) of the Air Navigation Act, 1936, extending licensing provisions to British *international* air lines, in which event any such line would require a licence before such operations could be undertaken.

Correspondence.

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL.]

Reporting Deaths to Coroners.

Sir,—Owing to uncertainty as to the obligations of medical practitioners to report deaths to coroners, the Medical Defence Union and the London and Counties Medical Protection Society have received a number of inquiries from their members as to the legal position. The above-named societies accordingly obtained the opinion of Mr. Roland Burrows, K.C., of which the following is a summary authorised by him :—

(1) There is no legally enforceable duty resting on a practitioner, acting as such, to report any death to a coroner.

(2) The coroner has no power to require a practitioner to report any death to him.

(3) It is the duty of the Registrar of Deaths to report deaths in certain circumstances to the coroner.

(4) A practitioner must not do anything to obstruct the coroner in the discharge of his office.

(5) A practitioner may make a post-mortem examination with the consent of the deceased's relatives, whether or not he knows the cause of death, unless, by so doing, he knowingly hinders the coroner in carrying out his duties; but, as soon as it comes to the knowledge of a practitioner that the coroner has been informed from any source touching the death, on no account should any examination of the body be made without instruction from the coroner.

We have stated above the legal duties of practitioners, but they, like other members of the community, have social, public and moral obligations not enforceable by law to assist coroners. It is important that practitioners and coroners should collaborate harmoniously for the public good, and it is hoped that every practitioner will refer to the coroner any death respecting which he feels any doubt.

JAMES FENTON, President,
The Medical Defence Union, Limited,
49, Bedford Square, London, W.C.1.

CUTHBERT WALLACE, President,
The London and Counties Medical Protection Society, Limited,
Victory House, Leicester Square, London, W.C.2.

P.S.—A copy of Mr. Roland Burrows' Opinion, upon which the above is based, can be obtained by members on application to the Secretary of the Medical Defence Union or of the London and Counties Medical Protection Society.

Books Received.

The Solicitors Act, 1941. By THOMAS G. LUND, Secretary of The Law Society. With a Foreword by the Rt. Hon. LORD WRIGHT, M.A., LL.D. 1943. Demy 8vo. pp. xiii, 136 and (Index) 15. London: Butterworth & Co. (Publishers), Ltd. 15s. net.

Burke's Loose-Leaf War Legislation. Edited by HAROLD PARRISH, Barrister-at-Law. 1943 Volume. Parts 8 & 9. London: Hamish Hamilton (Law Books), Ltd.

The Polish Law of Marriage and Divorce. By KAZIMIERZ NIEC, LL.D., Cracow. Reprinted from The Scottish Law Review, Edinburgh, 1943.

Mr. Hubert Stanley Houldsworth, K.C., has been elected a Bencher of Lincoln's Inn in place of the late Sir George Lowndes.

A Conveyancer's Diary.

Partial Intestacy.

ALMOST, if not quite, the most difficult questions on the 1925 Acts are those which arise in working out the effects of Administration of Estates Act, s. 49. That section appears in Pt. IV of the Act which is entitled "Distribution of residuary estate": that fact is material in that the section is not in the same Part as s. 33. Section 49 is as follows: "Where any person dies leaving a will effectively disposing of part of his property, this Part of this Act shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the will and subject to the following modifications:—(*a*) The requirements as to bringing property into account shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons; (*b*) The personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Part of this Act in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take that part beneficially."

There have been a number of cases on this section of which, on the present occasion, I propose to deal with only two, *Re McKee* [1931] 2 Ch. 145 and *Re Plowman* [1943] Ch. 269; 87 SOL. J. 248. But before doing so, I ought perhaps to point out that one effect of a partial intestacy is wholly invisible upon an inspection of s. 49. Under s. 34 (3) and Sched. I, Pt. II, of the Act the first item which is made available, where the estate is solvent, for payment of debts and expenses is "property of the deceased undisposed of by will," so that s. 49 only comes into effect upon the fund that is undisposed of less the debts and expenses. Thus, in *Re Plowman* the costs were to be paid in the first place out of the estate, but to be recouped out of the undisposed of interest which was in income.

In *Re McKee* the testator died in 1928 leaving a will giving his residuary real and personal estate to his trustee on trust for sale, and after payment of debts and expenses to invest the net residue. The trustee was to pay the income of residue to the testator's widow for life, and on her death to divide corpus between such of the testator's brothers and sisters as were then surviving. The last of them died in 1930 while the widow was still living, so that from that moment it was clear that the corpus of residue was not dealt with by the will. The widow set up a claim to £1,000 and 5 per cent. interest out of the property undisposed of together with a life interest in the balance of that property. Moreover, as that property was a reversionary interest she claimed that *Rowlls* v. *Bebb* [1900] 2 Ch. 107 should be applied, which would have meant that the reversion would have had to be sold, the proceeds invested and the income paid to the widow as life tenant. These contentions were not accepted by Maugham, J., and the Court of Appeal. It will be convenient to set out the reasoning of Lawrence, L.J. He first stated that s. 33 of the Act, which provides for the estates of intestates to be held on trust for sale, could have no application. That section is, by subs. (7), expressly made subject to any will of the deceased; in the present case the will provided fully for administration, and the only subject-matter of the intestacy was a fund arising after administration. He went on to say that the fundamental error in the widow's contention "consists in treating this reversionary interest as if it were an item of the personal estate belonging to the testator at the date of his death, which fell to be converted into money by the trustee either under the trust for sale in the will, or under the statutory trust for sale contained in s. 33, or under the rule in *Howe* v. *Lord Dartmouth*. It is plain to my mind that it is nothing of the kind, but is a beneficial reversionary interest in the testator's residuary estate, which first came into existence on the testator's death by the joint operation of the will and the statute and vested in and now belongs to the persons in whose favour it was created; the trustee has no power of disposition over it" (p. 160). "Under the effective provisions of the will the only duty of the trustee during the life of the widow is to preserve the capital of the residuary estate intact and to pay the income arising therefrom to the widow during her life. On her death, but not until then, it will be the duty of the trustee to distribute the corpus of the residuary estate. Being undisposed of, the trustee will then have to distribute the estate in accordance with s. 46 of the Act of 1925. In *Cooper* v. *Cooper*, L.R. 7 H.L. 53, Lord Cairns expressed the opinion that the Statute of Distributions ought to be looked at as in substance nothing more than a will made by the Legislature for the intestate. Applying that principle to the present case, the provisions of s. 46, so far as applicable in the circumstances, should be read into the will of the testator after the determination of the life interest of the widow, as if they had been there inserted in place of the trust for his surviving brothers and sisters. The trustee can no more sell the reversionary interest taken by the persons entitled under s. 46 than he could have sold the reversionary interests of the testator's brothers and sisters had they been still alive." That being the position, the widow's estate would eventually be entitled, upon her own death, to £1,000 and 5 per cent. interest,

but not to a life interest, as there was nothing undisposed of in her lifetime.

Attention was also called, particularly by Romer, L.J., to certain important differences of wording between s. 33 and s. 49. The former is applicable "On the death of a person intestate as to any real or personal estate." There is no provision in the Act that "real or personal estate" shall include *any interest in* real or personal estate. That being so, the learned lord justice was of opinion that s. 33 is confined to the case of a person dying intestate as to "some one or more specific items of his real or personal estate, and does not extend to a case like the present, where there is a will which deals with every item of the testator's estate, but omits to dispose of every interest in that estate" (p. 165). Section 49, on the other hand, refers to a testator being intestate as to part of his "property," a term which by s. 55 (1) (xvii) includes any interest in real or personal estate. In the opinion of Romer, L.J., the change in language was deliberate, and was designed to ensure that in such cases as that before the court s. 49 should apply, but s. 33 should not.

In *Re Plowman*, the position was slightly different. The will contained no trust for conversion, and it was possible to say as from the testator's death, and not only from some later date, that a partial intestacy was going to occur. The subject-matter of the intestacy was also different. Corpus was effectively disposed of as from the death of the testator's widow, but during her lifetime certain income was not dealt with by the will. Cohen, J., cited the judgments in *Re McKee* at some length, and in reliance on them held that s. 33 could not apply to the undisposed of income, especially in view of the remarks of Romer, L.J., which are mentioned above. The learned judge then went on to deal with the suggestion that as each instalment of such income accrued, it should be invested, that the £1,000 and interest should come out of the invested fund, but that subject thereto the widow was entitled only to the income of such fund, and not to the undisposed of income of the estate. He rejected this contention on the ground that, while the facts were the converse of those in *Re McKee*, the principle was the same: he referred also to *Re Thornber* [1937] Ch. 29. The real point is, of course, that made by Lawrence, L.J., following Lord Cairns, that the statutory provisions for intestacy are like a will made by Parliament for the testator. In the case of a partial intestacy one had to write in the statutory provisions to fill the gaps. Parliament says that a widow is to have £1,000 and interest on an intestacy in priority to all else. Income is undisposed of. Very well, that must go to the widow until she has had her £1,000 and interest. When that has been paid off, undisposed of income will still be accruing. Who does the Act say is to take income next? With a childless widow, as we have in *Re Plowman*, it says that the widow is to have the whole income of residue for life. So be it. The gap is filled. But the residue of income during the widow's life is all that is not disposed of by the will. She cannot get more than is undisposed of. Therefore the order would be that she should have the whole income during her life, the £1,000 and interest being merged in that.

The effect of these two cases appears to be that, on a partial intestacy, one must not regard the undisposed of portion of the estate as an aggregate which has to be collected or realised and then invested so as to produce income. On the contrary, one must first ascertain what gaps there are in the will: then one must see what is the quality *under the will* of the assets which become undisposed of by reason of those gaps. Finally, one must apply the rules for devolution on intestacy and ascertain who would take such assets under those rules on the footing that the assets continue to be income or capital, in possession or reversion, just as they are under the will. Thus, if the interest undisposed of is one in either income or capital, arising after the widow's death, she can get nothing (except her £1,000 and interest, which always comes first, as it is the prior charge on both income and corpus). If the interest is in income and arises during the widow's life, she takes the whole of it if she is childless, on the footing that she is entitled to the whole income of the estate during her life. If she has children, she takes first her £1,000 and interest: when that is discharged she takes half the income for life, and the other half goes among the children. Such a method of approach is clearly right in view of *Re McKee* and *Re Plowman*; it also seems much less complicated and less likely to cause trouble than the alternative courses which were unsuccessfully urged in those cases.

NOTE.—I must apologise for the presence of three misprints in last week's "Diary." Two were trivial; the third was the substitution of "confining" for "conferring," in the seventh line from the end of "Investment of Trust Funds."

The first of the new Pension Appeals Tribunals to sit in the provinces opened at Manchester on Monday last. Another provincial tribunal will open at Newcastle on 6th December, move to Leeds on 13th December, and to Liverpool on 20th December. Up to now the only tribunal to sit has been the one in the Law Courts in London. In the provinces, as in London, British Legion officials will be present to act, if required, as "friends" of appellants.

Landlord and Tenant Notebook.

War Damage: a "Short Tenancy" case.

IN *Langford Property Co., Ltd.* v. *Pajzs* (1943), 60 T.L.R. 47, an action for rent, two defences were pleaded in the alternative: (*a*) that the premises had at the material times been unfit by reason of war damage, unoccupied, and that the tenancy under which they were held was a "short tenancy" within the meaning of the Landlord and Tenant (War Damage) (Amendment) Act, 1941, and (*b*) that the tenant had, two or three days after the war damage had made the premises unfit, surrendered the tenancy by handing his keys to the plaintiffs' porter who accepted them as their agent.

The decision on the first point depended on whether s. 1 (2) of the Act referred to was retrospective. The relevant facts, stated in chronological order, were as follows:—

On 14th March, 1940, the plaintiffs let the premises to the defendant for three months from 4th February, 1940, and thereafter from three months to three months, forehand rent.

On 8th December, 1940, they were rendered unfit by reason of war damage; but no notice of disclaimer was ever served.

On 7th August, 1941, the Landlord and Tenant (War Damage) (Amendment) Act, 1941, came into force.

The claim was originally for rent from 4th December, 1940, to 4th January, 1942, but it was conceded that what accrued or would have accrued after 7th August, 1941, was irrecoverable and a reduction made accordingly.

Apart from authority, it was argued on the tenant's behalf that s. 1 (2) was intended to be retroactive because of the words "for any period": "Where *for any period* any land is unfit by reason of war damage and is not occupied either in whole or in part by the tenant, no rent shall be payable under the tenancy in respect of that period": and the use of "general" terms in subss. (1) (enacting that the provisions for disclaimer and retention should not apply to "short tenancies"), (7) (either party can apply *at any time* for a determination whether land is unfit, or of *any other* question), and (9) (excluding from the operation of the section tenancies already the subject of notices of disclaimer or retention under the principal Act) was also relied upon.

Lewis, J., held, however, that the language used was not "such as plainly to require" him to construe the statute as retroactive, the requirement being that stated by Lindley, L.J., in *Lauri* v. *Renad* [1892] 3 Ch. 402 (C.A.), and, though the defendant had, as he found, honestly believed that his liability had come to end on 8th December, 1940, his lordship was unable to find that there was any such termination.

This is, of course, a case in which the Legislature has introduced an amending statute in the light of experience of the operation of the measure amended. (For a discussion of the particular amendment, see 86 SOL. J. 272.) But when one considers not only the difficulty of finding anything in the section itself to suggest retrospective operation, but also the fact that the principal Act does, on certain occasions, very clearly express such intention (e.g., in s. 1, relieving against obligations to repair in a disposition or contract collateral thereto: by subs. (5) "disposition" means any instrument, etc., whether made before or after the commencement of the Act), one realises that the defendant had indeed an uphill fight.

It may be mentioned that s. 13 of the 1944 Act, also a case of second thoughts occurring to Parliament, has been held not to be retroactive. This is the section which makes forehand rent recoverable in the event of war damage rendering the premises unfit. Under the principal Act, we had, in *Turner* v. *Stella Bond, Ltd.* [1941] 1 K.B. 569 (C.A.), *obiter dicta* by MacKinnon and Goddard, L.JJ., to the effect that a tenant would be entitled to a refund if notice to avoid disclaimer were served by the landlord; but when the point had to be decided in the absence of notice to avoid disclaimer in *Hildebrand* v. *Lewis* [1941] 2 K.B. 135 (C.A.), it was held that in such circumstances no apportionment was provided for. Then, when the amending Act was passed, s. 13 expressly made rent apportionable and any forehand rent recoverable; but this was held not to avail the tenant in *London Fan & Motor Co., Ltd.* v. *Silverman* (1942), 58 T.L.R. 119, whose premises were bombed in April, 1941, soon after he had paid a quarter's rent in advance.

Lewis, J., put his judgment into writing, but its terms suggest that the alternative defence, that of implied surrender, did not present much difficulty. From a landlord and tenant point of view, however, it is of much interest.

It appeared that on the morning after the damage was done the defendant, having been informed by the A.R.P. authorities that he could not return to the flat, rang up the plaintiffs' managing agents reporting what he had been told and asking for alternative accommodation (they managed other flats). His evidence was that the lady to whom he spoke said that nothing could be done for him and that he must leave the damaged flat. He then left the keys in the porter's box or office, and eleven months passed before he heard anything from the plaintiffs or their agents.

The judgment deals very shortly with the contention "that the handing over of the keys of the flat and the acceptance of those keys by the porter constituted a termination of the tenancy

and a surrender of the lease. In the circumstances of this case I am unable to find that there was any such surrender or termination, and this contention fails." The passage which follows implies that the point was not very strenuously argued.

One would have liked to have heard more about the effect produced by the several circumstances of the case: e.g., did the message that the defendant must leave the flat weigh at all, or was it construed merely as advice loyally to comply with official orders; and were the keys accepted by the porter, and not merely handed to or left for him, as the plaintiffs' agent.

It could not, of course, be argued that *Black* v. *Mileham* (1941), 58 T.L.R. 13 (C.A.) (see 85 SOL. J. 454) availed the tenant; for while in that case the returning of keys played an important part, what really mattered was that they were referred to in a letter which (though it never mentioned unfitness or war damage or used the word "disclaim" or cited any enactment) was held to suffice as a notice of disclaimer. In the recent case there was no document at all, and the contention was not that the tenancy had been disclaimed, but that an ordinary surrender had been effected. It must, incidentally, have been this rather than the yet unenacted amending statute which enabled Lewis, J., to find that the defendant (national of a country where, I believe, the doctrine of frustration is more widely applied, and covenants more readily considered interdependent) honestly believed his liabilities to have ceased.

There are a number of reported cases in which the handing over of keys has, and also a number of cases in which it has not, been held to bring about a surrender. In this case it seems likely that the message to which I have referred was construed as legal advice rather than as an offer to accept what the landlords could, under and by virtue of the Landlord and Tenant (War Damage) Act, 1939, s. 4 (2) (*a*) and 8 (2) (*a*), have been made to accept or avoid; and consequently that the porter was held to have no authority. In *Pearce* v. *Boulter* (1860), 2 F. & R. 133, one described in a very short report in three different ways, namely, as "a person who kept the plaintiff's empty houses," as "a mere collector of rents" (hardly consistent with the first description) and as "the housekeeper" was held to have no such authority.

To-day and Yesterday.

LEGAL CALENDAR.

November 22.—In November, 1784, a court martial sat at the Horse Guards to try Colonel Debbieg, of the Engineers, Commandant of the Chatham Garrison, for using indecent and disrespectful language reflecting on the Master-General of the Ordnance, the Duke of Richmond, in letters addressed both to him and to General Bramham. On the 22nd November the court held that on account of his meritorious services he should be let off with a reprimand after making an apology. When this had been done the Duke addressed the court declaring that in instituting the prosecution he had merely aimed at the benefit of the service, and that the matter should now be buried in entire oblivion; he would be happy to reward and promote the colonel in his corps according to his future merit. It is interesting to note that the offending correspondence was transcribed by the great William Cobbett, then a soldier in the 54th Regiment and copyist to the Colonel, who encouraged and helped him.

November 23.—In July, 1852, there was a fierce election riot at Six Mile Bridge in County Clare involving an immense mass of country people and a small body of troops of the 31st Regiment called out to protect the tenants of the Marquis of Conyngham on the way to the polling-booth. After scenes of great disorder and violence the military fired, killing six of the demonstrators and wounding as many more. The coroner's jury returned a verdict of wilful murder against one of the magistrates and eight of the soldiers. The coroner's inquisition was removed into the Court of Queen's Bench, but a motion to quash the verdict on the ground that it was palpably against the weight of the evidence was dismissed on the 23rd November. The accused were accordingly indicted at the Clare Assizes in the following February, but the grand jury threw out the bill.

November 24.—On the 24th November, 1577, the Inner Temple Benchers made a decision as to building at the eastern end of the Inn on the site of the present King's Bench Walk. "Licence to Robert Woodleff, fellow of this House, to build such rooms as he shall think convenient, near to or upon the wall of the White Friars in any place between Mr. Harrison's new buildings and the alley, commonly called 'the Long Alley or the Benchers' Alley' and to have the same for his own and any his sons' lives, paying the pensions and other duties. And no man to be admitted without their assent." Harrison's building probably occupied the site of Nos. 11 and 12, King's Bench Walk.

November 25.—In 1747 England and France were at war. In October, Admiral Hawke, cruising between Ushant and Cape Finisterre, intercepted an important convoy sailing from La Rochelle to the West Indies and fought a brilliantly successful action with the escorting squadron consisting of eight large warships, of which six were captured. The two others made good their escape, chiefly, it was thought, through a blunder by Captain Fox, of the *Kent*. On the 25th November he was tried by court martial at Portsmouth on a charge of not coming properly into the fight and not doing his utmost to engage, distress and endamage the enemy. The evidence amply vindicated his personal courage and he was acquitted of cowardice. He was, however, dismissed his ship for paying too much attention to the advice of his officers, contrary to his better judgment.

November 26.—There was a first-class literary fracas when Mr. William Hepworth Dixon, traveller, writer and historian, sued the proprietor of the *Pall Mall Gazette* for libel, the hearing opening in the Court of Common Pleas on the 26th November, 1872. The offending article began: "We have received from Mr. Hepworth Dixon another of those insolent ingenious letters with which he contrives to puff his books, obscene, inaccurate or both." It accused him of being "wrong of forethought and indecent on purpose," so as to keep his name in the papers. In a subsequent article he was called "a successful compiler of obscene literature and vamped-up travels." Now, although a man of great energy and ability, he was no scholar, and his work abounded in misconceptions and inaccuracies, but he had the lively style which ensured his popularity among the uncritical. His cross-examination by Sir John Karslake turned chiefly on his book "Spiritual Wives," in which he had dealt with the peculiar sexual beliefs and practices of sects like the Shakers, the Ebelians and other products of religious revivalism and touched on the "innocent endearments" of "bundling" as practised in Wales and America. The gusto and evident relish with which he had treated these subjects told heavily against him, and there was a good deal of laughter at his expense during his cross-examination. There were cheers during the speech for the defendant and applause when the jury announced a verdict of only one farthing damages.

November 27.—On the 27th November, 1861, Richard Reeve, the eighteen year old son of a basket maker of Drury Court, Drury Lane, was tried at the Old Bailey for the murder of his step-sister, Mary, aged ten, an aggravating child with whom he had lived in constant strife. When her mother was out she was entrusted with the keys, and used to annoy him by locking up the food when he came home from work. One day he strangled her with a rope and threw her body down the trap door into the coal cellar. He afterwards told two young women that he had murdered her, but his manner was so unconcerned that they thought he was joking. Later he told two other youths with whom he went for a walk, and they found the body. Reeve made no attempt afterwards to deny the act, and was found guilty, but recommended to mercy on the ground of the bad example of his dissipated family. The death sentence was commuted to penal servitude for life.

November 28.—Young Robert Troyt was a lawyer's clerk who went in too freely for the dissipations of London. He came to need money and forged a draft of £75 payable to Sir William Blackstone. On his trial he was gaily dressed and did not seem to realise his situation. He was hanged before Newgate on the 28th November, 1798, and screamed in horror when he saw the gallows. He was seventeen years old.

ROYALTY AT LINCOLN'S INN.

It was a happy inspiration of the Masters of the Bench of Lincoln's Inn to invite Queen Mary to become Senior Bencher of the Society, a position formerly occupied both by King George V and the Duke of Kent. The royal tradition of the Inn goes back very far. In 1662 King Charles II attended the Revels there. The entertainment must have pleased him, for in 1671, on the invitation of Sir Francis Gooderick, K.C., Reader for the Lent Reading, he consented to dine in the Hall with his brother, the Duke of York, and Prince Rupert, attended by the Duke of Monmouth and many lords. Trumpets and kettledrums sounded as he passed through the Chancery Lane gate nearest Holborn, into the garden and between ranks of barristers and students in their gowns, on his way to the Council Chamber. In the Hall he sat under a canopy of state, waited on by benchers, barristers and students, while his own violins played in the gallery. At last "to express his most gracious acceptance of their humble duty" he sent for the Book of Admittances "and with his own hand entered his royal name therein, most graciously condescending to make himself a member thereof, which high and extraordinary favour was instantly acknowledged by all the members . . . with all possible joy and received with the greatest and most humble expressions of gratitude, it being an example not precedented by any former King of this realm." The Duke of York, the Prince and the other lords followed his example, borrowing gowns from the students "with which His Majesty was much delighted." In 1845 Queen Victoria and Prince Albert consented to attend a *dejeuner* in the new Hall on the occasion of its opening. Legal robes and official uniforms made the scene splendid and the band of the Coldstream Guards was there to play. In the Library the Queen received an address from the Treasurer, replying that she hoped that learning might long flourish and virtue and talent rise to eminence within those walls. In the Hall she sat under a canopy of state and appeared "pleased and well contented." Prince Albert was admitted to the Society, and after the feast appeared with a student's gown

over his Field-Marshal's uniform. When his health was drunk it was observed that the Queen joined in. "Holding a glass of port wine in her hand, she stood up all the time and drank it off to the bottom." A few weeks after, he was called to the Bar and in the following year, having accepted an invitation to the Bench of the Society, he dined on Grand Day in Trinity Term as a Bencher.

Obituary.

LORD HALSBURY, K.C.

Lord Halsbury, K.C., died in an internment camp in France on 15th September, aged sixty-three. He was the eldest son of the first earl, who was Lord Chancellor in 1885–86, 1886–92, and 1895–1905. He was educated at Eton and New College, Oxford, and was called to the Bar by the Inner Temple in 1906. He joined the South Wales Circuit, and took silk in 1923. Lord Halsbury was appointed Recorder of Carmarthen in 1923, and resigned the appointment in 1935. He had since acquired business interests, and for some time before the war had been living in France.

MR. F. GLOVER.

Mr. Francis Glover, solicitor, of Bath, died on Thursday, 18th November. He was admitted in 1909.

MR. W. GRAHAM.

Mr. William Graham, solicitor, of Messrs. Nicholson, Graham and Jones, solicitors, of Moorgate, E.C.2, died on Wednesday, 17th November, aged eighty-one. He was admitted in 1884. His interests were largely connected with newspaper enterprises, and he was chairman of Illustrated Newspapers, Limited and other companies, and was a director of Associated Newspapers, Limited. Mr. Graham acted as legal adviser to the late Lord Northcliffe. He was a governor of St. Bartholomew's Hospital, and had been Master of the Merchant Taylor's Company.

Our County Court Letter.

The Grazing of Horses.

IN *King* v. *Ashton-Hopper*, at Witney County Court, the claim was for £15, for grazing three horses, for stabling, and for the price of a new lock. The plaintiff's case was that he had grazed the defendant's three horses from the 22nd May to the 10th July, viz., seven weeks at 6s. per horse, or 18s. a week altogether. Further items included the cost of stabling, hay, and straw, and also the lock on a barn door which the defendant had broken. The defendant's case was that the use of the stable was included in the let. The plaintiff did not provide water, and the defendant admitted having broken the lock. A cheque for £2 18s. had been tendered, but had been returned by the plaintiff. This comprised a payment of 4s. per week per horse, plus 10s. for hay and straw, which was a reasonable amount. His Honour Judge Donald Hurst held that the payment of £2 18s. was reasonable, and he gave judgment for that sum and for a further £2 in respect of stabling, and for 3s. 6d. as the price of the lock, with costs.

War Legislation.

STATUTORY RULES AND ORDERS, 1943.

No. 1598. **Alien.** Approved Ports (Fleetwood) Order, Nov. 9.

No. 1620. **Coal** (Quorum of the Regional Valuation Boards) (No. 2) Rules, Nov. 13.

E.P. 1511. **Consumer Rationing.** General Licence, Nov. 12, *re* Supply of Clothing for the Personal Use of Officers of the Armed Forces of the U.S.A. in connection with their Military Duties.

E.P. 1588. Consumer Rationing. Licence, Direction and Order, Nov. 12, *re* Supply of Rationed Goods by and to Ships Store Dealers.

E.P. 1622. **Defence** (General) Regulations, 1939. Order in Council, Nov. 17, adding reg. 69B (Passenger services over private factory lines).

No. 1602/S.55. **Session, Court of, Scotland.** Procedure. Act of Sederunt, Oct. 12, anent the Printing and Publishing of the Daily Rolls, the Minute Book, Teind Minute Book, and Record of Edictal Citations and other Publications.

No. 1605/L.35. **Solicitor, England.** Regulations, Dec. 15, 1936.

No. 1606/L.36. Solicitor, England. Regulations, May 29, 1940.

No. 1607/L.37. Solicitor, England. Regulations, Oct. 25, 1943, with reference to Applications and Appeals to the Master of the Rolls under the Solicitors Act, 1932 to 1941.

No. 1594/L.34. **Supreme Court, England.** Procedure. The Rules of the Supreme Court (No. 4), Nov. 8.

BOARD OF TRADE.

Companies Act, 1939. Companies Law Amendment Committee (Chairman, Cohen, J.). Minutes of Evidence. 2nd Day, Sept. 24, 1943; 3rd Day, Oct. 1, 1943.

WAR OFFICE.

Regulations for the Home Guard, 1942. Vol. II. Amendments 5, Oct., 1943.

Notes of Cases.

CHANCERY DIVISION.

In re **Eumorfopoulos; Ralli** *v.* **Eumorfopoulos.**

Simonds, J. 29th October, 1943.

Will—Construction—Bequest of "contents of house" to be selected "up to the value of £10,000 taken at the probate valuation"—Meaning of "probate valuation"—Articles included in "contents of house."

Adjourned summons.

The testator by cl. 3 of his will dated the 12th April, 1938, bequeathed to his wife: "Such of the contents of my house . . . as my wife shall select up to the value of £10,000 taken at the probate valuation." The testator died on 19th December, 1939. He was a well-known collector, and his estate included a valuable collection of antiques which formed part of the contents of his house. The usual course was followed and the affidavit leading to probate included a valuation made by a first-class valuer. The entire contents were valued at £9,783, and the widow selected the whole. Subsequently, an application was made under s. 40 of the Finance Act, 1930, in respect of certain articles of national, scientific, historic or artistic interest, forming part of such contents and valued at £6,228 10s., and they were exempted from duty until sale. In June, 1940, part of the contents of the house were sold by auction. The articles exempted from duty until sale realised £23,078 in excess of the valuation for probate and the other articles over £6,000 above the valuation figure. This summons was taken out by the executors of the will asking whether the expression "probate valuation" in cl. 3 meant the valuation made for the purpose of obtaining probate of the will or the amount for which the articles were subsequently sold. The summons raised the further question as to what articles were included in the expression "contents of my house."

SIMONDS, J., said that it was impossible to ascribe to the testator the intention that a different method of valuation should be used for the articles forming part of the contents of his house according to whether they were, or were not, exempt from duty under s. 40 of the Finance Act, 1930. He would first examine the contentions of the parties by reference to the exempted articles, which formed the larger part of the contents. What did the testator mean by the expression "value . . . taken at the probate valuation"? It was clear that no value was ascribed by the Revenue to articles which were exempted from duty, for the reason that duty was exigible not on any principal value ascertained in any arbitrary way, but under s. 40 by reference to the proceeds of sale. Although there was no valuation for the purposes of exacting duty, yet there was a valuation for the purposes of probate which included the exempted articles as well as other articles. He found it impossible to believe that in regard to those articles the testator meant anything but the valuation which was included in the affidavit leading to probate. It was inconceivable that in giving the widow a right of selection up to the value £10,000, he meant contents to the value of £10,000 to be ascertained at a time, it might be many years later, when they were sold and estate duty was in fact exacted. Accordingly, with regard to exempted articles, the test was what was the valuation ascribed to such articles in the affidavit which led to probate and which in familiar language was referred to as the "probate valuation." With regard to the unexempted articles, he should have come to the same conclusion without the assistance of the conjunction of exempted articles. The testator was providing a convenient method, as between the several recipients of his bounty, of deciding how the benefit to his widow should be measured. He would declare that in the case of both the exempted and unexempted articles the valuation made for the purpose of obtaining probate was "the probate valuation" for the purposes of cl. 3. With regard to the question as to the goods which were included in the expression "contents of my house," the gold plate, which was kept by the testator at his bank except on special occasions when it was brought to the house for exhibition purposes, was not part of the contents of the house. The articles which were usually kept at the testator's house, but at the outbreak of the war were removed for greater safety, must be regarded as part of the contents. The articles which at the testator's death were in America for the purpose of exhibition and were normally part of the equipment of the house formed part of its contents.

COUNSEL: *H. H. King; Wynn Parry*, K.C., and *G. Cross; Neville Gray*, K.C., and *Danckwerts*.

SOLICITORS: *Freshfields, Leese & Munns*.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

In re **Hall; Public Trustee** *v.* **Montgomery.**

Uthwatt, J. 5th November, 1943.

Will—Bequest of annuity—Discretionary trusts—Forfeiture if annuitant "does or suffers" any act whereby the annuity becomes payable to any other person—Annuitant resident in France—Annuity vested in Custodian of Enemy Property—Whether any act "done or suffered"—Meaning of "suffer."

Adjourned summons.

The testatrix by cl. 8 of her will dated the 29th July, 1936, directed her trustees to hold her residuary estate upon trust out of the income to pay two annuities to M and P respectively. The clause then continued: "If the said M or the said P shall alienate or charge their respective annuities or become bankrupt or do or suffer any act or thing whereby the said annuities or any part thereof would or might but for this present provision become vested in or payable to any other person or persons such annuities shall cease to be payable and my trustees may in their absolute discretion pay such annuity or annuities or an annuity or annuities of a smaller amount or amounts to any or either of them the said annuitants

or any other person being a then living person whose name is referred to in this my will." The testatrix died on the 12th May, 1941. The second annuitant P was a French national, resident in France. By the Trading with the Enemy (Specified Areas) Order, 1940, made under the power conferred by the Trading with the Enemy Act, 1939, the provisions of that Act were made applicable to Metropolitan France, and P's property in this country accordingly vested in the Custodian of Enemy Property. This summons was taken out by the trustees of the will, asking whether the annuity given to P had ceased to be payable to her as from the 11th July, 1940. It was contended for the beneficiaries named in the will, other than P, that the discretionary trusts in cl. 8 had come into operation, and, in accordance with the principal laid down in *In re Gourju* [1943] Ch. 24; 86 SOL. J. 367, the annuity was not now payable to the Custodian.

UTHWATT, J., said that the question was whether P had "done or suffered" anything whereby the annuity became forfeited. The condition was a condition subsequent, and must be construed strictly. Reading it as a whole, it seemed to be directed to the forfeiture of the annuity in the event of the annuitant doing personally certain classes of things, such as alienating or charging the annuity. It appeared not to be directed to the case where the annuity was subject to an alienation which was not the result of her own act. He did not think it could be said that P had done any act whereby the annuity had become payable to the Custodian. She was living in France, the normal place for a French subject. He failed to see how her living in France could be said to amount to the doing of an act of the kind which was contemplated by the clause. The question whether she had "suffered" anything was a more difficult one. The word "suffer" was capable of more meanings than one. He had come to the conclusion that here the proper construction to put on the word "suffer" was "permit." P had not permitted anything to be done. The annuity was therefore payable to the Custodian of Enemy Property. There was no suggestion that P had at any time alienated or charged the annuity, and he would express no opinion as to what would be the effect of any alienation or charge hereafter.

COUNSEL: *Sir Norman Touche; Waite; Danckwerts.*

SOLICITORS: *Joynson-Hicks & Co.; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Abercrombie *v.* Abercrombie.

The Right Hon. the President and Henn Collins, J. 15th July, 1943.

Husband and wife—Separation order on ground of cruelty—Subsequent reconciliation—Whether reconciliation can be conditional—Summary Jurisdiction (Married Women) Act, 1895 (58 & 59 Vict., c. 39), s. 7—Summary Jurisdiction (Separation and Maintenance) Act, 1925 (15 & 16 Geo. 5, c. 51), s. 2 (2).

Husband's appeal from a refusal by the Blackpool justices to discharge a separation order made on 18th September, 1940, in favour of the wife respondent on the ground of the husband's persistent cruelty. The husband sought to have the order discharged on the grounds of a resumption of cohabitation between the parties since the making of the order.

Payments had been regularly made under the order, but the husband said that on 2nd March, 1943, he resumed cohabitation with his wife. In fact on that date for the first time since the order, but by no means for the last time, he had intercourse with his wife. He was a doctor, employed on 2nd March as a *locum tenens* for another doctor, and taking employment as a *locum tenens* wherever in the country he should be required to do so. Correspondence between the parties clearly showed that in the period after 2nd March during which intercourse was intermittently taking place the wife was concealing, through fear of her mother, the fact that she was becoming reconciled to her husband. Two further acts of intercourse took place in March, 1943, and they then arranged an Easter holiday together in London, which she referred to as "another honeymoon." In her evidence before the justices the wife did not deny the acts of intercourse, but said that she was frightened of her husband and was giving him a trial. The justices "found that there had been overtures by the appellant for the parties to resume cohabitation and that the respondent was willing to take place, provided she was satisfied that the appellant would conduct himself towards her in a normal manner and that there would be no further acts of cruelty by him."

The PRESIDENT said that, strictly speaking, under s. 7 of the Summary Jurisdiction (Married Women) Act, 1895, as amended by s. 2 (2) of the Summary Jurisdiction (Separation and Maintenance) Act, 1925, the application to the justices was unnecessary if the facts were established: the application was open to the husband, but not obligatory. The natural meaning of the words in the justices' reasons was that the wife was willing for a resumption of cohabitation to take place with the condition subsequent that, if the husband should not conduct himself properly and should be guilty of acts of cruelty, she would be at liberty and would be justified in parting from him. Whether one talked about resumption of cohabitation or condonation, any wife who had suffered an injury effected a reconciliation with the implied condition that there should be no recurrence of the bad behaviour, but that did not change the nature of the reconciliation. On whether or not there had been a resumption of cohabitation, the mere fact that sexual intercourse had taken place was not decisive (*Rowell* v. *Rowell* [1900] 1 Q.B. 9; *Mummery* v. *Mummery* [1942] P. 107; and *Pulford* v. *Pulford* [1923] P. 18). These cases also established that, just as you could have an act of desertion where the parties were not living under the roof of a matrimonial "home," but were living in circumstances which amounted to having a matrimonial home, so, equally, you could have a resumption of cohabitation without necessarily going under the same roof, at any rate at the moment, by resuming a state of affairs which could properly be called "a matrimonial home." (See *Bradshaw* v. *Bradshaw* [1897] P. 24, at p. 26; *Fitzgerald* v. *Fitzgerald*, 32 L.J. P.M. & A. 12; and *Mahoney* v. *McCarthy* [1892] P. 21, 25). Complete resumption of cohabitation at the date of the second honeymoon and, if it was necessary so to hold, much earlier, was the only possible inference from the facts. The appeal must be allowed.

HENN COLLINS, J., said that it was quite wrong in law to say there could not be a resumption of cohabitation if the resumption was contingent upon the continued good behaviour of one or the other or both of the spouses. It was none the less a reconciliation and carried all the consequences. Appeal allowed; order discharged. Wife's costs up to what the court held should have been ordered as security if an order had been made, fifteen guineas.

COUNSEL: *D. Armstead Fairweather; Victor O. Williams.*

SOLICITORS: *Robinson & Bradley*, for *Blackhurst, Parker & Blackhurst*, Blackpool; *Boxall & Boxall*, for *Woosnam & Co.*, Blackpool.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

Notes and News.

Honours and Appointments.

The King has approved the appointment of His Honour Judge BLACK, Recorder of Belfast, to be a Judge of the High Court of Justice in Northern Ireland in place of Megaw, J., resigned.

The King has approved the appointments of Mr. RALPH GEORGE SCOTT BANKES to be Chairman of the County of Flint Quarter Sessions, and Mr. HUBERT STANLEY HOULDSWORTH to be Deputy Chairman of the County of York (West Riding) Quarter Sessions. Mr. Bankes was called by the Inner Temple in 1924, and Mr. Houldsworth by Lincoln's Inn in 1926.

The King has approved the appointment of Mr. ROLAND BURROWS, K.C., to be a Commissioner of Assize on the South-Eastern Circuit. Mr. Burrows will sit at Maidstone in addition to Charles, J. Mr. Burrows was called by the Inner Temple in 1904, and took silk in 1932.

The Minister of Health, The Right Hon. Henry Willink, M.C., K.C., M.P., has appointed Mr. MICHAEL REED to be his Private Secretary, and Miss L. R. PRESCOTT to be his Assistant Private Secretary. Sir EDWARD CAMPBELL, Bart, M.P., has been appointed his Parliamentary Private Secretary.

Mr. J. D. METTERS, registrar of Cambridge and Newmarket County Courts for seven years, has been appointed Registrar of Leicester County Court.

Notes.

Captain Stanley Prescott, barrister-at-law, has consented to stand as National Government candidate in the Darwen by-election caused by the death on active service of Captain Stuart Russell. Captain Prescott was called by Gray's Inn in 1935.

Under the Export of Goods Control (No. 9) Order, 1943 (S.R. & O., No. 1636), which comes into force immediately, Kuwait, Bahrein Islands, and Muscat are added to the list of countries and territories to which the export of "all goods" is controlled.

An ordinary meeting of the Medico-Legal Society will be held at Manson House, 26, Portland Place, W.1 (Tel., Langham 2127), on Thursday, 25th November, 1943, at 4.15 p.m., when a paper will be read by Dr. Letitia Fairfield, C.B.E., D.P.H., Barrister-at-Law, on "The Poison Pen—A Study of Anonymous Letter Writers."

Wills and Bequests.

Mr. C. J. F. Atkinson, solicitor, of Burley-in-Wharfedale, left £16,511, with net personalty £10,620.

Lieutenant The Hon. Allen Balzano Hailey, solicitor, of Kensington, left £32,521.

Mr. Thomas James Richards, solicitor, of Birmingham, left £5,339, with net personalty £1,357.

Mr. Wilfred Henry Simpson, solicitor, of York, left £4,013, with net personalty of £1,728.

Court Papers.

COURT OF APPEAL AND HIGH COURT OF JUSTICE—CHANCERY DIVISION.

MICHAELMAS SITTINGS, 1943.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA	APPEAL COURT I.	Mr. Justice BENNETT
Monday, Nov. 29	Mr. Jones	Mr. Blaker	Mr. Andrews
Tuesday, ,, 30	Reader	Andrews	Jones
Wednesday, Dec. 1	Hay	Jones	Reader
Thursday, ,, 2	Harris	Reader	Hay
Friday, ,, 3	Blaker	Hay	Harris
Saturday, ,, 4	Andrews	Harris	Blaker

DATE	GROUP A.		GROUP B.	
	Mr. Justice SIMONDS *Non-Witness*	Mr. Justice COHEN *Witness*	Mr. Justice MORTON *Witness*	Mr. Justice UTHWATT *Non-Witness*
Monday, Nov. 29	Mr. Hay	Mr. Harris	Mr. Jones	Mr. Reader
Tuesday, ,, 30	Harris	Blaker	Reader	Hay
Wednesday, Dec. 1	Blaker	Andrews	Hay	Harris
Thursday, ,, 2	Andrews	Jones	Harris	Blaker
Friday, ,, 3	Jones	Reader	Blaker	Andrews
Saturday, ,, 4	Reader	Hay	Andrews	Jones